IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

FRIDAY, THE 14TH SEPTEMBER 2007 / 23RD BHADRA 1929

CRP.No. 2075 of 1997(H)

AGAINST THE ORDER OF THE TALUK LAND BOARD, QUILANDY DT. 15.2.1996 IN TLB (Q)NO.1/77.

REVN. PETITIONER: RESPONDENT

STATE OF KERALA.

BY GOVERNMENT PLEADER SRI BASANT BALAJI

RESPONDENTS: CLAIMANTS
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1. PONGAMPARA LEELA ALIAS LEELA DEVASSYA,
   W/O. MATHEW AND D/O. P.V.DEVASSYA,
   OTTAPLAKKAL HOUSE, PO.ATHIYODI,
   KOZHIKODE DT.

2. PONGAMPARA ROSAMMA,
   W/O. JOSEPH AND D/O. P.V.DEVASSYA,
   PANTHIRUVELI HOUSE,
   P.O.PERAVOOR, CANNANORE DT.

3. NISHANTH THOMAS, PONGAPPARA,
   S/O. LATE PONGAPPARA THOMAS,
   PANNIKOTTOOR VILLAGE,
   PERAMBRA, KOYILANDY TALUK.

R1 BY ADV. SRI MOHAN C. MENON
R2 BY ADV. SRI N.L.KRISHNAMOORTHY
R3 BY ADV. SRI.PARTHASARATHY

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 14/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

HARUN-UL-RASHID, J.

C.R.P. 2075 of 1997

Dated: September 14, 2007

ORDER

The State has come up in revision against the order of the Taluk Land Board, Quilandy dated 15.2.1996. The Taluk Land Board in the order dated 30.8.1980 determined the excess land to be surrendered by Sri Pongampara Varkey Devassia, the declarant, and directed him to surrender 12.02 acres of land as excess land in his possession. After the remand order dated 15.2.1983 in C.R.P.No.2844/1980, the Taluk Land Board again considered the matter afresh and by order dated 24.5.1984 re-fixed the excess land to be surrendered as 8.47 acres of land. The assessee unsuccessfully challenged the said order before the High Court in C.R.P.No.1916/1984 and thereafter in Civil Appeal No.4152/1995 before the Hon'ble Supreme Court. The order of the Taluk Land Board dated 24.5.1984 has thus become final. Subsequently when proceedings are initiated by the authorities for taking over the excess land as ordered above, two applications under section 85(8) of the Kerala Land Reforms Act (the Act for short) were submitted by two of the children of the declarant in September 1995. According to them, they are interested in the land directed to be surrendered, being members of the statutory family of the assessee, and that they are in possession of the land directed to be surrendered. They have also averred in the applications under sec.85(8) of the Act that the petitioners are the minor daughters of the assessee as on 1.1.1970 who are the applicants in the sec.85

(8) petition and that both of them are not included as members of the statutory family in the draft statement filed in the proceedings before the Taluk Land Board or in the respective civil revision petitions filed before the High Court. According to the sec.85(8) petitions if both the applicants are included in the statutory family of the assessee, the assessee's family is entitled to hold ceiling area specified in clause (c) of sub-sec.(1) of sec.82. The proceedings before the Taluk Land Board is vitiated since there is absence of intimation under sec.85(7) of the Act and, therefore, the entire proceedings are originated, continued and culminated without jurisdiction. Therefore, they sought for setting aside the orders passed earlier and for re-determining the ceiling area of the declarant after taking into account the applicants as members of the statutory family who were omitted to be included by the authorities.

2. Sec.85(7) of the Act reads as follows:

> "Where any person fails to file the statement specified under sub-section (2) or sub-section (3A), the Land Board shall, intimate that fact to the Taluk Land board and thereupon the Taluk Land Board shall after necessary enquiries, by order, determine the extent and other particulars of the land, the ownership or possession or both of which is or are to be surrendered:
> Provided that before such determination the Taluk Land Board shall give an opportunity to the persons interested in the land, to be heard."

Under sec.85(7) the Taluk Land Board shall determine the extent and other

particulars of the land liable to be surrendered by the assessee under the Act. The determination shall be made after necessary enquiries through the machineries provided by the Revenue Department. As part of the enquiry and determination, it is incumbent on the part of the Taluk Land Board to give an opportunity to the persons interested in the land to be heard before passing an order of determination. The persons interested in the land are all persons who are having interest in any manner other than the interest of the assessee. If such a determination of excess land of the assessee is made without notice to the persons interested, such persons under sec.85(8) can apply to the Taluk Land Board to set aside the order and further request to proceed under sub-sec. (5) or sub-sec.(7) of sec.85, as the case may be. It is true that sec.85(2A) of the Act invests the liability to file a declaration only on the persons specified therein, because the legislature intended to hold those persons liable to be prosecuted and punished if such persons do not give the declaration. The fact that the father of the minors, who are members of the statutory family, is liable to give a declaration does not mean that the minors cannot be heard in the ceiling case either during their minority or after they attain majority. In this case only because the proceedings were initiated against the father of the revision petitioners, it cannot be said that the revision petitioners are not interested in the proceedings initiated against their father wherein is involved property belonging to them as well. The Act does not indicate anywhere as to who are to be heard by the Land Board and who need not be heard. It is something fundamental with

our jurisprudence that when action is being taken against a person or when an order is being passed which will affect the interests of a person or when the property of a person is dealt with, such a person must have a right of hearing. Rule 12 of the Kerala Land Reforms (Ceiling) Rules specifically recognises the right of such persons to be heard. Rule 12 deals with service of draft statement and notice to persons interested. Rule 12(2) states that the notice may be served on all other persons, so far as may be known, who have or are likely to have any claim to, or interest in the ownership or possession or both of the lands indicated in such draft statement as lands to be surrendered.

3. As per sec.82(1)(c) of the Act, the ceiling area of land shall be, in the case of a family consisting of more than five members, 10 standard acres increased by one standard acre for each member in excess of five, so however that the ceiling area shall not be less than 12 acres and more than 20 acres in extent. By the addition of two more members to the statutory family who were omitted in the ceiling proceedings initiated against them also, the statutory family can hold the ceiling area of not less than 12 standard acres and not more than 20 acres in extent. According to the petitioners, the assessee being a six member family, is eligible to retain 20 ordinary acres and, if thus calculated, the land held by the assessee in excess of the ceiling limit is only 47 cents. The learned Government Pleader submitted that the determination of the ceiling area is calculated after considering the objection by the assessee, who is the father of sec.85(8) petitioners, and after conducting a detailed enquiry under Rule 13 of

the Ceiling Rules and, therefore, submitted that a plain reading of the provisions relating to the determination in so far as the minor children and their rights are concerned, it is the husband or the wife who would be filing their objections and participating in the enquiry for determining the extent and identity of the land to be surrendered. According to him under these provisions there is no scope for a minor after attaining majority or unmarried daughter after getting married to contend that they are persons interested and determination was done without hearing them. Sub-sec.(8) of sec.85 postulates an order passed without hearing any interested person. That is, a person must be able to show that he has a claim upon or legal concern in the land. The learned Government Pleader further argued that the petitioners cannot have a claim upon or legal concern in the land in as much as their interest has been determined after hearing their father as per the provisions of sec.85(5) of the Act. Thereafter there is no scope for saying that the determination was without hearing them, that after the determination they have ceased to be a person interested and that they cannot contend that they continued to have a claim or legal concern over the land in spite of the determination. It is also submitted that the status of the persons have been determined as it stood on 1.1.1970, that in almost all families there might have been minor children and unmarried daughters, that the family has been defined so as to include them and determine their rights after hearing their parents and that if the contention is accepted invariably, all the minor children after attaining majority would be persons interested and ceiling cases have to be

re-opened. According to him subsequent changes in their status as a major or married minor child cannot alter the determination in fixing the ceiling area.

4. The contentions of the learned Government Pleader based on the decision in *Ashraf v. State of Kerala - 1998 (1) KLT 737* and other cases relied on in the said decision is clearly distinguishable for the reasons set out below. That was a case where the minor children, who are included in the statutory family, on attaining majority preferred sec.85(8) petition and claimed independent right. The case on hand is different and distinguishable in all respects. In this case sec.85(8) petitioners before the Taluk Land Board are, though minors as on 1.1.1970 and members of the statutory family, they were not included in the statutory family of the declarant. For reasons not known, they were not included in the statutory family of the assessee. The Taluk Land Board proceeded as if the members of the statutory family do not include the sec.85(8) petitioners herein. So, while computing the ceiling area to be retained by the statutory family of the assessee, the said two minors are not included and, therefore, the ceiling area to be retained by the family was also calculated and determined on the basis of the statutory family consisting of the assessee, his wife and other minor children excluding the two minor children who are the sec.85(8) petitioners in this case. It is in this context that the two minors had approached the Taluk Land Board stating that the determination of the ceiling area applicable to the statutory family was erroneously decided excluding the two minors and, therefore, the right to hold a larger extent by the statutory family of the sec.85(8)

petitioners has been lost due to the exclusion of the sec.85(8) petitioners in the account of the statutory family and, therefore, they have every right to agitate before the Taluk Land Board under sec.85(8) proceedings for further exclusion of land covered by the ceiling area which they are entitled to under sec.82(1)(c) of the Act. In a similar context this court in *Krishna Kumar v. Taluk Land Board - 1981 KLT 594* held that minors who are members of the statutory family are persons interested and they have got a right to get themselves impleaded in the proceedings before the Taluk Land Board with a view of get an opportunity to urge their contentions and held that sec.85(2A) of Act 1/1964 envisages the liability to file a declaration only on the persons specified therein and the fact that the father of the minors who are members of the statutory family is liable to give a declaration does not mean that the minors cannot be heard in the ceiling case either during their minority or after their attaining majority. It was also held that the Act does not indicate anywhere as to who are to be heard by the Land Board and who need not be heard.

5. Sec.2(14) of the Act defines “family” which means husband, wife and their unmarried minor children or such of them as exist. As per the authorised officer's report the assessee has two other minor children as on 1.1.1970 and these two minor children are omitted to be included as members of the statutory family. Being members of the statutory family, the omission to include them in the family membership is a serious omission and, therefore, their claim to include them in the statutory family of the assessee deserves consideration. The re-

determination of ceiling area applicable to the statutory family of the assessee has therefore become necessitated and the statutory family is entitled to retain the ceiling area applicable to them as per sec.82(1)(c) of the Kerala Land Reforms Act, as rightly held by the Taluk Land Board.

In the circumstances, re-determination of the ceiling area and the passing of the impugned order stating that the statutory family is eligible to retain 20 ordinary acres is legal and valid. I find no merit in the C.R.P. and therefore the same is dismissed. There will be no order as to costs.

HARUN-UL-RASHID
JUDGE

mt/-

HARUN-UL-RASHID, J.

C.R.P. No.2075 OF 1997

JUDGMENT

14.9.2007